

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,)	
)	
Government,)	Case No. 16-CR-21
)	Milwaukee, Wisconsin
vs.)	
)	
SAMY MOHAMMED HAMZEH,)	January 24, 2018
)	
Defendant.)	

TRANSCRIPT OF STATUS CONFERENCE

BEFORE THE HONORABLE PAMELA PEPPER

UNITED STATES DISTRICT JUDGE

Official Transcriber:
Richard Derrick Ehrlich, RMR, CRR
richard_ehrlich@wied.uscourts.gov
(414) 290-2642

Proceedings recorded by electronic recording.
Transcript produced by computer-aided transcription.

A P P E A R A N C E S

For the Government: Gregory J. Haanstad
Paul L. Kanter
United States Department of Justice
Office of the U.S. Attorney
517 E. Wisconsin Street
Milwaukee, WI 53202
414.297.1700
greg.haanstad@usdoj.gov
paul.kanter@usdoj.gov

For the Defendant: Craig W. Albee
Federal Defender Services of
Wisconsin, Inc.
517 E. Wisconsin Street
Room 182
Milwaukee, WI 53202
414.221.9900
craig_albee@fd.org

Joseph A. Bugni
Appearing Telephonically
Federal Defender Services of
Wisconsin, Inc.
22 E. Mifflin Street
Suite 1000
Madison, WI 53703
608.260.9900
joseph_bugni@fd.org

Samy Mohammed Hamzeh, defendant, present in person.

TRANSCRIPT OF PROCEEDINGS

Transcribed From Audio Recording

* * *

THE CLERK: The Court calls the Criminal Case
2016-CR-21. *United States of America vs. Samy Hamzeh.*

Please state your appearances starting with the
attorneys for the Government.

MR. HAANSTAD: Good morning, Your Honor. Gregory
Haanstad and Paul Kanter of the United States.

Good morning.

THE COURT: Good morning.

MR. ALBEE: Good morning, Your Honor. Mr. Hamzeh
appears in person with Craig Albee, and Joe Bugni is on the
phone.

THE COURT: Good morning. I assumed Mr. Bugni was
there.

Good morning, Mr. Bugni.

MR. BUGNI: Good morning.

THE COURT: All right. Thank you all for getting
together today. As you know, this originally had been
scheduled for our final pretrial conference date, but then
the defense asked -- and I think the Government didn't
oppose -- that we convert it to a status conference and take
the trial date off because, as it turned out, doing the
comparisons of the Arabic and English translations of the

1 conversations was becoming a little more burdensome and
2 complicated than the defense had anticipated. So we did
3 take the trial date off. We converted today's hearing to a
4 status conference. I know that the two motions that are
5 pending right now -- there's a motion on the Brady materials
6 and a motion to dismiss Count 2. Both of those are pending
7 before Judge Duffin, although it looks like some of the
8 Brady issues may have ended up getting results worked
9 through in the motion process, but still yet he has a ruling
10 scheduled for that.

11 We had also sent out a pretrial order giving you
12 all dates for turning over your witness list and exhibit
13 lists and things like that. Obviously, that'll get pushed
14 to whenever we select a new trial date. We'll just bump the
15 deadlines to accommodate that trial date.

16 So as far as I'm aware, the real issue that we
17 need to talk about is a realistic or practical new date for
18 the trial given what still needs to be done. And maybe sort
19 of going backwards and out of order, I should turn to
20 Mr. Albee first to ask what sense you're getting, Mr. Albee,
21 about how much time you'll need on the transcripts?

22 MR. ALBEE: Judge, we've spent a considerable
23 amount of time going through the transcripts and trying to
24 identify problems, and I've sent some correspondence for the
25 Government identifying our concerns, and Mr. Bugni and

1 Mr. Kanter and Mr. Haanstad and I all had probably a 45
2 minute to an hour conversation yesterday evening about
3 transcript issues, and there are a number of -- I think we
4 should be heading in the right direction. We can end up
5 with a lot of disputes about what we hope to accomplish, but
6 the Government will be making some corrections to some of
7 its transcripts and clarifications. We'll be having our
8 translators also examine completed transcripts, and that's
9 just an ongoing process.

10 I expect that the Government will be turning over
11 some reports that I understand are in the process of being
12 declassified, but that also is a somewhat lengthy process.
13 That might be another six to eight weeks.

14 There's still some uncertainty here, although the
15 parties are working together to try to get all these things
16 resolved without the input of the Court.

17 And then the additional concern, of course, since
18 I wasn't able to talk to Mr. Hamzeh until this morning about
19 my conversation with the Government and where we're at --
20 obviously, he has a concern about this being, you know,
21 tried sooner rather than later because he's in custody. He
22 asked understandable questions about why this is taking so
23 long, and I share his frustration but also know that we need
24 to have these issues resolved to have the trial.

25 What we had talked about with the Government

1 yesterday was setting a status conference in March with the
2 hopes that, you know, the idea would be we're on top of
3 everything, and, you know, there might be a few loose ends,
4 but most of those we're on top of. It's possible, however,
5 we recognize that there might be something that isn't quite
6 as far along as we expect we will be. I mean, all the
7 parties are certainly working as diligently as possible to
8 move this forward.

9 So I think our request would be twofold: I don't
10 know where the Court's calendar is, but we would like to get
11 something on the date as a likely trial date. We could also
12 set this for a status in March at which time we could be
13 prepared to let the Court know what loose ends need to be
14 addressed, if any, and we would be in a better position to
15 say, "Yes, that trial date definitely works," and to set it
16 that time.

17 I think the other kind of dates, like
18 identification of expert witnesses, all those other kinds of
19 things -- right now it will be difficult to say, "By
20 April 3rd, all transcripts are" -- whatever it is, just to
21 pull something out of the air, it would be difficult right
22 now to do that part of it. But we would -- Mr. Hamzeh
23 particularly would like to have at least a tentative date on
24 the calendar. I know it's difficult with the Court's
25 calendar to have two weeks, but if we wait until March to do

1 that, then we're farther down the line.

2 THE COURT: Thank you for that estimation,
3 Mr. Albee.

4 And before I turn to the Government, let me just
5 ask: Have you given any thought to -- setting aside how my
6 calendar looks, have you given any thought to a date that
7 you think would be far enough off for trial that you could
8 get clear of some of the issues you all are working through?

9 MR. ALBEE: I would hope something like late May,
10 early June.

11 THE COURT: Okay. All right.

12 Mr. Haanstad or Mr. Kanter?

13 MR. HAANSTAD: Mr. Albee is correct. Those are
14 the conversations that we had. And what we discussed
15 yesterday, again, was setting this matter for a scheduling
16 conference, a status conference sometime around the week of
17 March 19th. I think that would give us time to work
18 through some issues.

19 You know, this whole process of having defense
20 translators in some cases start a complete new translation
21 of the same conversations that the Government has had
22 translated, in other situations at least have defense
23 translators go through and review and double-check the
24 Government's translations, it has proven to be a really
25 long, cumbersome process. And it appears we still have a

1 long ways to go as far as -- I'm trying to at least
2 potentially attempt to reconcile those two (indiscernible)
3 translations. And I think that that process could end up
4 anywhere from the parties jointly presenting the Court and
5 presenting jury stipulated transcripts. We're in agreement
6 that these are the correct translations, conversations that
7 took place among the defendant and the confidential sources.
8 That would be one end of it, an extreme that's possible. At
9 the other end of that spectrum would be we can't come to an
10 agreement, and each party has to submit its own transcripts.
11 I just think we're a long ways away from knowing where
12 between those two items we're going to end up.

13 So I think that if we're given until somewhere
14 around a week of March, I think we'll be in a much better
15 position to know where we stand on that issue, which is
16 going to play significantly into how much time we need to
17 prepare for trial and how long the trial is going to be.

18 But I agree. We discussed and agree that it makes
19 sense to set a sort of a hearing sometime the week of
20 March 19th, if that works for the Court's calendar, with
21 the idea that -- at least tentatively we would be prepared
22 for trial sometime around the beginning of June.

23 THE COURT: And, Mr. Haanstad, I know it's hard to
24 imagine sort of a more complicated scenario, which is the
25 one where each party has to present its own transcripts to

1 the jury or its own translation to the jury, but I think you
2 all had originally projected a two-week trial, it will take
3 two weeks to try the case. Is that still a reasonable
4 projection in your mind if scenario number -- if at the end
5 of the spectrum ends up being --

6 MR. HAANSTAD: Yes.

7 THE COURT: Okay. Would you agree, Mr. Albee?

8 MR. ALBEE: I think so.

9 THE COURT: Okay. All right. Well, first of all,
10 in terms of the week of the 19th of June for a status --
11 June? March for a status conference, I'm currently
12 scheduled to be in trial that week in a civil trial,
13 although I scheduled a phone call with those folks to try to
14 figure out if they've even talked to each other because this
15 seems like a case that ought to resolve itself. But that
16 being said, at the moment, I would be perfectly happy to
17 give you all a hearing during that date, but it'll have to
18 be one of those 8:30 in the morning or 12:30 lunch things,
19 and I apologize.

20 So that being said, I could do Tuesday the 20th or
21 Wednesday the 21st. Either one of those at either 8:30 or
22 12:30 depending on what works for you all.

23 MR. ALBEE: That's fine.

24 MR. HAANSTAD: Any of those will be fine.

25 THE COURT: Okay. So no preferences as to which?

1 MR. ALBEE: No. Those days are open.

2 THE COURT: Okay. Why don't we, if it's all right
3 with you all, then, why don't we do the 21st at 12:30. So
4 that's March 21 at 12:30 p.m. for a status conference to
5 find out how things are progressing in terms of the
6 transcripts.

7 And then in terms of getting a trial date on the
8 calendar, I certainly completely understand Mr. Hamzeh's
9 concerns about the amount of time that this is taking.

10 I will note just for your benefit, Mr. Hamzeh, or
11 for whatever it's worth, at the end of last year, I had a
12 trial in a similar situation who really wanted the trial to
13 go quickly because he had been in custody, and I think he
14 pushed his attorney to go a little more quickly than his
15 attorney was ready to go. His attorney would've liked to
16 have investigated some more information that he didn't have
17 a chance to investigate, and it became a problem for him
18 when the case went to trial.

19 So I understand your frustration, and I would
20 probably be in the same boat. But at the same time, I'm
21 having everybody have the equipment that they need to be
22 able to do the best job they can I think is pretty critical.

23 So you all talked about the end of May, early
24 June. I would rather not start the end of May because we
25 got Memorial Day there. So we wouldn't be able to get a

1 full weekend at the end of May.

2 I currently have, believe it or not, a
3 mesothelioma asbestosis case starting on the 4th of June,
4 and that's scheduled to be a two-week trial. So the first
5 available date that I would have in June is the 18th.
6 That week is pretty clear. I don't have anything else.
7 That's a full week.

8 And the next week, the week of the 25th, is also
9 clear other than a couple of hearings, which we can move.

10 MR. HAANSTAD: And, Judge, can I ask, is that
11 civil trial a (indiscernible)?

12 THE COURT: Which one? The one --

13 MR. ALBEE: The one on the 4th. I realize it's
14 always guesswork.

15 THE COURT: You know, we can push it if we have
16 to. I will tell you, this case was filed in 2010, and it
17 was sent off to multi district litigation, and a whole bunch
18 of stuff got resolved, and then it came back.

19 The gentleman who had mesothelioma died. This is
20 both a wrongful death and a personal injury suit. His wife
21 is now in her 70s. So we've been trying to get it to move
22 as quickly as possible because she's getting older, and
23 she's not in great health.

24 Of course, it might resolve itself, but as of
25 right now, it has not.

1 MR. ALBEE: And my concern is I'm supposed to be
2 out of town roughly the 21st through the 25th or 26th.

3 MR. HAANSTAD: And I don't know if you're still
4 considering that week of June 4th, but I'm scheduled to be
5 out of town on the week of -- the end of that week and the
6 beginning of the week of the 11th.

7 THE COURT: Okay. So it doesn't look like that
8 would work either.

9 MR. KANTER: Judge, if I could just add. I would
10 be fine the weeks of the 18th and the 25th, but I have
11 to be done by July 6th. So if this runs long, that's my
12 only problem because I'm leaving for Canada for a two-week
13 vacation on July 6th. As long as we're done by then, I'm
14 good.

15 MR. HAANSTAD: I think this points out part of the
16 issue. That week of March 19th, we'll be in a much better
17 position to know how long the trial is going to take,
18 whether it's a realistic possibility that it might run into
19 that third week, again, at one end of the spectrum or on the
20 other if maybe we come to some agreements and get this in in
21 a week or a week and a day. We'll be in a better position I
22 think in March to know that, which is why we had in mind
23 sort of a more tentative trial date.

24 THE COURT: It's frankly six of one, half a dozen
25 of the other to me whether we go ahead and get something on

1 the calendar now or not. But, you know, if we're now trying
2 to get past -- I mean, Mr. Kanter just indicated that he's
3 going to be gone until -- it sounds like your first day back
4 is the 23rd of July, right, Mr. Kanter?

5 MR. KANTER: That would be correct. I would
6 appreciate not having to come back on the 22nd and start
7 trial on the 23rd.

8 THE COURT: Yeah, I'm sure you would because I've
9 got back-to-back trials for -- yeah, you can't have the
10 23rd anyway because I've got a trial.

11 MR. KANTER: (Indiscernible.)

12 THE COURT: By that time, there may be a fourth
13 judge here, and maybe my calendar will look a little
14 different. Who knows. One can only hope.

15 I have, it looks like, the week of August 14th
16 and the week of August 20th. That two-week period in time
17 I don't have anything. Also, as of right now, nothing the
18 week of the 27th of August. So the first week of August,
19 the first full week of August I am to be in trial; but after
20 that, the rest of the month is clear for me.

21 MR. KANTER: The week of the 13th, the 20th,
22 and 27th?

23 THE COURT: Yes.

24 MR. HAANSTAD: That's fine by me.

25 THE COURT: Mr. Albee, I know that's -- I'm sorry,

1 Mr. Kanter.

2 MR. KANTER: I was going to say that's fine by me.

3 THE COURT: I know that's later than what you were
4 looking for, Mr. Albee.

5 MR. KANTER: It could be done before Labor Day, I
6 think.

7 THE COURT: You know, between now and when we get
8 together again in March, if I have further information about
9 the trial that's supposed to go during the 4th -- although
10 it sounds like that's not going to work for Mr. Hamzeh.
11 But, you know, if anything shifts in any of these civil
12 cases that I've got scheduled, or any of the criminal cases
13 go away, I'm more than happy to keep you all up to date on
14 that and let me know if something opens up.

15 But at the moment, I've got time in June, but it
16 sounds like it doesn't work for everybody. We have that
17 first week of July, but that's not a full week, I don't
18 think, because I think one day that -- we'll be off for the
19 Fourth of July, and then the last day Mr. Kanter will be
20 able will be the 6th. We get back to the 23rd, and I'm in
21 trial. And then the 30th, I'm in trial, and the 6th of
22 August. So we've got three weeks at the end of August.
23 We've got the time in June if anybody's travel schedules
24 change.

25 MR. ALBEE: I just don't think I can push

1 Mr. Hamzeh that far off.

2 THE COURT: Well --

3 MR. ALBEE: I mean, we can set it the week of
4 June 18th.

5 THE COURT: Okay. We'll tentatively set it for
6 the week of June 18th. In the meantime, I'll see if
7 there's anything that can move on my calendar that if it
8 wasn't already there -- I mean, it is already there. But
9 for now, so that we get something on the calendar, we'll put
10 trial the week of June 18th.

11 I think, it seems to me, given Mr. Hamzeh's
12 comments and everyone else's, that it makes sense to wait
13 until the March status date to talk about due dates for
14 pretrial items. If it looks like you are going to get to a
15 point where it won't need a full two weeks to try the case,
16 that might free up people's calendars and open up a little
17 bit more movement. So I think there are a lot of options
18 here that could open up between now and March.

19 So I'm going to put the 18th on the calendar so
20 that we have something there.

21 But, Mr. Albee, I'll make every effort to see if I
22 can't find some space in there that doesn't conflict with
23 your plans but also doesn't put us out to August. We'll see
24 what we can figure out.

25 Anything else from the Government today?

1 MR. HAANSTAD: Your Honor, I wasn't sure if
2 whether the Court had made a speedy trial finding with
3 respect to the last continuance; and if so, if that remains
4 in effect?

5 THE COURT: I don't recall, actually, off the top
6 of my head. I apologize. Well, I'll go back and look. If
7 I didn't, I will make that finding, and I'll start, exclude
8 the time now until March the 21st, which is our next
9 status conference.

10 MR. HAANSTAD: Thank you.

11 THE COURT: Thank you.

12 Mr. Albee, anything else on behalf of Mr. Hamzeh?

13 MR. ALBEE: No, Judge.

14 THE COURT: All right. Thank you, everyone. I'll
15 keep you up to date.

16 (Hearing concluded.)
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Richard D. Ehrlich, a Registered Merit Reporter
and Certified Realtime Reporter, certify that the foregoing
pages are a true and accurate transcription of the audio
file provided in the aforementioned matter to the best of my
skill and ability.

s/Richard D. Ehrlich July 18, 2018

Richard D. Ehrlich, Official Court Reporter